

STATE OF NEW JERSEY  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
OAL DOCKET NO. CRT 15869-2012  
DCR DOCKET NO. PC13HB-61815

B.L. Parent/Guardian, on behalf of )  
A.L., a Minor, and B.L., Individually, )  
) Administrative Action  
Complainants, )  
) **SUPPLEMENTAL ORDER FOR**  
v. ) **ATTORNEYS' FEES**  
)   
Evesham Township Triple A )  
Summer Camp, )  
)   
Respondent. )

**APPEARANCES:**

Iraisa C. Orihuela- Reilly, Esq., (*Disability Rights New Jersey*, attorneys) for the complainant.

Laurel Peltzman, Esq., (*Capehart and Scatchard*, attorneys) for the respondent.

**BY THE DIRECTOR:**

This matter comes before the Director of the New Jersey Division on Civil Rights (DCR) from a verified complaint filed by B.L., individually, and on behalf of her minor son, A.L., alleging that the Evesham Township Triple A Summer Camp (the Camp) discriminated against A.L. on the basis of his disability, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -42. On March 20, 2014, Administrative Law Judge (ALJ) Susan M. Scarola issued a recommended initial decision finding that the Camp violated the LAD and ordering it to pay \$2,500 in compensatory damages, a \$500 statutory penalty, and counsel fees. The Camp submitted exceptions on April 2, 2014, and B.L. submitted a reply on April 9, 2014. In accordance with N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.6(e), the ALJ's recommended decision became final on May 5, 2014. This supplemental order addresses the fee award.

The ALJ directed counsel for Complainant to submit a detailed affidavit of services to the DCR within thirty days. Counsel for Complainant submitted that information to the DCR on April 21, 2014, and copied counsel for the Camp. The Camp has not replied to the fee application.

When a complainant prevails on a LAD complaint, attorney's fees should ordinarily be awarded unless special circumstances would make a fee award unjust. Hunter v. Trenton Housing Auth., 304 N.J. Super. 70, 74-75 (App. Div. 1997). Any application for legal fees must be supported by a certification of services. Rendine v. Pantzer, 141 N.J. 292, 334-35 (1995). That certification must be more than simply a raw compilation of hours. Ibid. It must be sufficiently detailed to allow a meaningful review of whether the hours billed were reasonably expended in light of the result achieved, and whether the billed services were excessive, redundant, or unnecessary. Ibid.; Szczepanski v. Newcomb Hosp. Med. Center, 141 N.J. 346, 366-67 (1995). Although a fee award is not required to be proportionate to the damages awarded, if the fees requested are disproportionate to the damages recovered, then there is a heightened responsibility to review the fee request. Id. at 366. That evaluation should also weigh "the interest to be vindicated in the context of the statutory objectives" and "any circumstances incidental to the litigation that directly or indirectly affected the extent of counsel's efforts." Id. at 366-67.

The New Jersey Supreme Court has determined that the starting point for calculating a reasonable attorney's fee is computation of the "lodestar," which is derived by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. Rendine, supra, 141 N.J. at 334-35. Here, counsel's fee request is based on a rate of \$250 per hour. She was admitted to the bar in 1989, and is a senior staff attorney with Disability Rights New Jersey, a not-for-profit disability rights advocacy organization. The Director concludes that \$250 is a reasonable hourly rate for an attorney with counsel's level of skill and experience in New Jersey.

Counsel is requesting compensation for hours expended during DCR's investigation, during the OAL proceedings, and for subsequent services through April 4, 2014. Counsel's submission contains time records that are sufficiently detailed to enable the Director to accurately calculate the lodestar. Rendine, supra at 337; Szczepanski, supra at 346, 367.

Nevertheless, only those hours that were reasonably expended by the prevailing party's counsel can be included in the lodestar. Rendine, supra at 335. When evaluating an application for counsel fees, trial courts must "not accept passively" the submissions of counsel, but are required instead "to evaluate critically and carefully the aggregate hours . . . advanced by counsel for the prevailing party to support the fee application." Walker v. Guiffre, 209 N.J. 124, 131 (2012) (quoting Rendine, supra at 335). Accordingly, courts must focus on "the amount of time reasonably expended" rather than simply accept "the amount of time *actually* expended." Id. (quoting Copeland v. Marshall, 641 F.2d 880 (D.C. Cir. 1980)) (emphasis in original).

Applying those standards, the Director concludes that certain hours expended were not reasonable and necessary to the outcome of this case, so that the full amount of billings for those services should not be shifted to the Camp. First, counsel's certification shows 150 minutes on April 25, 2011, labeled "went to DCR Camden - client cancelled." In the absence of any other explanation, it appears that B.L. cancelled this meeting without informing her attorney. There is no basis for shifting this cost to the Camp.

Counsel's itemization reflects services starting on September 1, 2010 (i.e., prior to B.L. filing the complaint with the DCR on October 27, 2010). It may be appropriate for an attorney to be compensated for a reasonable amount of time spent in consultation, preliminary case evaluation, research and settlement negotiations before commencing litigation. See, e.g., Webb v. County Bd. of Educ., 471 U.S. 234, 243 (U.S. 1985)(noting that fees may be awarded for services typically performed before a complaint is filed, including drafting initial pleadings and developing the theory of the case; fees may be awarded for pre-complaint work that is both useful and of a type ordinarily necessary to advance the litigation to the stage it reached.); see

also H.I.P. v. K. Hovnanian, Inc., 292 N.J. Super. 144, 160 (Law Div. 1996) (awarding fees for time spent in pre-complaint research). However, because only work related to a LAD cause of action is compensable, and because DCR's staff drafts and files the verified complaint, only minimal attorney time should be compensable for work related to assessment of causes of action and other work related to the substance of the complaint.


Counsel has also billed for additional services while the complaint was pending with DCR. Counsel's itemization shows 300 minutes billed for drafting a litigation proposal in December 2010, along with 270 minutes in April and May 2012 for services that include amending the litigation proposal and drafting a new representation agreement. In light of DCR's administrative procedures, those fees should not be shifted to the Camp. After careful review of the individual services provided before this case was transmitted to OAL, the Director concludes that 570 minutes should be deducted from the time expended before counsel requested that this case be transmitted to OAL.

Counsel seeks payment at the attorney's rate for work performed on May 27, 2011, May 21, 2013, November 29, 2013, December 2, 2013, and December 12, 2013, totaling an additional 260 minutes, which appears to be either clerical in nature or courier service. Because copying and delivering briefs is not attorney work that would be reasonably billable at attorney rates, the Director concludes that it would be unreasonable to shift those costs to the Camp.

After careful review of the remainder of counsel's billings, including the time expended on briefs that appears to have required original research to address the specific legal issues raised in this matter, the Director concludes that after making the deductions discussed above, the time expended was reasonable in this case. Although the fees exceed the monetary award to the complainants, in this case the fees for the compensable services are reasonable and necessary to further the public policy of the LAD in ensuring that children with disabilities are afforded equal access to summer camps as public accommodations. Accordingly, fees will be awarded for 107.05 hours, at the rate of \$250 per hour, for a total of \$26,762.50.

WHEREFORE, it is on this 15<sup>th</sup> day of MM, 2014, hereby ordered as follows:

1. The respondent is liable for reasonable attorney's fees incurred by Complainant in the amount of \$26,762.50.
2. The respondent shall make the payments for compensatory damages and attorney's fees by check payable to Complainant B.L. It shall be delivered within thirty days of the date of this order, to the New Jersey Division on Civil Rights, sent to the attention of Waleska Lucas, at 31 Clinton Street, P.O. Box 46001, Newark, NJ 07102.
3. The respondent shall pay the \$500 statutory penalty by check payable to the Treasurer of the State of New Jersey. It shall be delivered within thirty days of the date of this order, to the New Jersey Division on Civil Rights, sent to the attention of Waleska Lucas, at 31 Clinton Street, P.O. Box 46001, Newark, NJ 07102.

  
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Craig Sashihara, Director  
NJ DIVISION ON CIVIL RIGHTS